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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re L.H., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

L.H.,

Defendant and Appellant.

A153881

(San Francisco County
Super. Ct. No. JW106650)

This appeal arises from persistent efforts by L.H., now an adult, to seal portions of his juvenile record. As a minor, L.H. was the subject of three sustained wardship petitions. In 2015, the juvenile court denied his motion to dismiss the petitions and seal the associated records under then newly-effective Welfare and Institutions Code section 786.¹ (*People v. L.H.* (Nov. 17, 2017, A135197, A144804 [nonpub. opn.] (*L.H. I.*)).² In *L.H. I.*, we remanded this matter to the juvenile court with instructions to consider the merits of L.H.'s motion with respect to the second and third petitions. On remand, the

¹ Statutory references are to the Welfare and Institutions Code unless otherwise stated.

² We previously granted the Attorney General's unopposed request that we take judicial notice of the record in *L.H. I.*

juvenile court found that L.H. did not satisfactorily complete his probation for either one and denied the motion.

L.H. now appeals from the order denying his motion to dismiss and seal the third petition. Because the juvenile court apparently misconstrued the statutory requirements for determining whether L.H. satisfactorily completed his probation, we shall remand for the court to reconsider the motion.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2011, L.H. was on probation for two wardship petitions that had been sustained against him: one for first degree robbery, and the second for felony possession of live ammunition with a firearm enhancement. A third wardship petition was filed that month arising from an incident in which L.H. pushed and threatened the mother of his child and grabbed the child from her. (*L.H. I, supra*, at p. 4.) In September 2012, L.H. admitted to felony infliction of corporal injury on a cohabitant (Pen. Code, § 273.5, subd. (a)), as alleged in the amended third petition. (*Id.* at pp. 4, 10.)

Meanwhile, in May 2012, after the third petition was filed, but before it was adjudicated, and while he was still on probation as a result of the first two petitions and on home supervision under section 628.1 for the third, L.H. was arrested and charged as an adult with felony assault with a deadly weapon committed against a public transit employee, felony participation in a criminal street gang, and misdemeanor destroying evidence. (See *L.H. I, supra*, at pp. 9-10.) By October 2012, before the disposition of the third petition, he pleaded guilty to one of the adult charges—felony participation in a street gang. (See *id.* at pp. 9-10, fn. 5.) At the disposition hearing on the third petition in December 2012, the juvenile court redeclared L.H. a ward of the court and reinstated his probation. (*Id.* at p. 10.)

In 2014, the juvenile court relieved L.H., then age 20, of all juvenile probation conditions (*L.H. I, supra*, at p. 10) and then, in 2015, L.H. asked the juvenile court to dismiss and seal the records of his second and third petitions under section 786, which had just come into effect. (*Id.* at pp. 10-11.) The court concluded that the sustained allegation of robbery, which is an offense listed in section 707, subdivision (b), from

L.H.’s first petition prevented it from reaching the merits of L.H.’s request as to the second and third petitions. (*Id.* at p. 11.) L.H. appealed, and we reversed the order denying the motion to dismiss and seal and remanded for the court to consider the merits of L.H.’s requests as to those two petitions. (*Id.* at p. 18.)

On remand, the juvenile court denied L.H.’s request as to both petitions on the merits. The court looked to two versions of section 786: the 2015 version that was in effect when the court ruled on his original request, and the 2018 version in effect when the court ruled after remand, and denied the motion under both versions.³

With respect to the third petition, the court recognized L.H. “finish[ed] his probation strong.” He had finished domestic violence counseling and was pursuing his education, as required by his probation. The court explained that in denying the motion, it was looking at “the totality of the circumstances,” including L.H.’s arrest and conviction as an adult for felony participation in a street gang, which occurred while L.H. was “on probation under juvenile jurisdiction for all three of those petitions.” This was a misstatement of fact. L.H. was not on probation for the third petition when he was arrested and convicted as an adult; to the contrary, he was charged with and convicted of an adult felony after November 2011, when the third petition was filed, and before December 2012, when he was placed on probation for the offense sustained in that petition. But as a result of the adult arrest and conviction, the juvenile court declined to find that L.H. had “satisfactorily completed his probation as defined by the statute.”

L.H. timely appealed the order denying the dismissal and sealing of the third petition.

³ In its ruling on remand, the juvenile court characterized the original version of section 786 as “a little more generic as compared to the 2018 version,” and characterized the 2018 version as “a more specific, more detailed statute, as it has evolved over the past few years.”

DISCUSSION

A. *Applicable Law and Standard of Review*

The version of section 786 in effect in 2015 provided, “If the minor satisfactorily completes (a) an informal program of supervision pursuant to Section 654.2, (b) probation under Section 725, or (c) a term of probation for any offense not listed in subdivision (b) of Section 707, the court shall order the petition dismissed The court shall order sealed all records pertaining to that dismissed petition in the custody of the juvenile court” (Stats. 2014, ch. 249, § 2.)

Section 786 was later amended. As relevant here, much of the language previously in section 786 was placed in subdivision (a), and subdivision (c)(1) was added. Subdivision (a) provided, “If a minor satisfactorily completes (1) an informal program of supervision pursuant to Section 654.2, (2) probation under Section 725, or (3) a term of probation for any offense, the court shall order the petition dismissed. The court shall order sealed all records pertaining to that dismissed petition in the custody of the juvenile court”⁴ (Stats. 2015, ch. 368, § 1, and ch. 375, § 1.5.) Subdivision (c)(1) provided, “For purposes of this section, satisfactory completion of an informal program of supervision or another term of probation described in subdivision (a) shall be deemed to have occurred if the person has no new findings of wardship or conviction for a felony offense or a misdemeanor involving moral turpitude during the period of supervision or probation and if he or she has not failed to substantially comply with the reasonable orders of supervision or probation that are within his or her capacity to perform.” (Stats. 2015, ch. 368, § 1, and ch. 375, § 1.5.) This language in subdivision

⁴ The limitation in former section 786 on dismissal of petitions sustained on the basis of offenses listed in section 707, subdivision (b), was revised in ways not relevant here, and moved to new section 786, subdivision (d). (Compare Stats. 2014, ch. 249, § 2, to Stats. 2015, ch. 368, § 1, and ch. 375, § 1.5.) The sustained offense from L.H.’s third petition is not listed in section 707, subdivision (b).

(c)(1) was effective in 2018, when the juvenile court addressed L.H.’s motion on remand. (Stats. 2017, ch. 679, § 2 and ch. 685, § 1.5.)⁵

Both parties’ briefs address the juvenile court’s ruling only with respect to the amended version of section 786 in effect in 2018. L.H. contends, and the Attorney General does not dispute, that the addition of subdivision (c)(1) clarified, rather than changed, the definition of “satisfactory completion” of probation. We agree, and review the juvenile court’s decision with respect to the amended version of the statute.

As a general matter, we review the juvenile court’s decision whether to dismiss and seal records under section 786 for an abuse of discretion. (*In re A.V.* (2017) 11 Cal.App.5th 697, 711.) But to the extent the court’s decision raises a question of statutory interpretation, we apply the de novo standard of review. (*In re Joshua R.* (2017) 7 Cal.App.5th 864, 867.)

“Our fundamental task in construing a statute ‘is to ascertain the Legislature’s intent [and] effectuate the law’s purpose. [Citation.] We begin our inquiry by examining the statute’s words, giving them a plain and commonsense meaning. [Citation.] In doing so, however, we do not consider the statutory language “in isolation.” [Citation.] Rather, we look to “the entire substance of the statute . . . in order to determine the scope and purpose of the provision [Citation.]” [Citation.] That is, we construe the words in question “ ‘in context, keeping in mind the nature and obvious purpose of the statute’ [Citation.]” [Citation.] We must harmonize “the various parts of a statutory enactment . . . by considering the particular clause or section in the context of the statutory framework as a whole.” [Citations.] We must also avoid a construction that would produce absurd consequences, which we presume the Legislature did not intend. [Citations.]’ (*People v. Mendoza* (2000) 23 Cal.4th 896, 907–908.)” (*In re Greg F.* (2012) 55 Cal.4th 393, 406.)

⁵ Other amendments to section 786 are irrelevant to the issue before us.

B. *Analysis*

L.H. argues that because he pleaded guilty and was convicted of an adult felony after the third petition was filed but *before* he was placed on probation for that petition, the trial court erred in concluding that he did not qualify as satisfactorily completing his probation under section 786, subdivision (c)(1). We agree.

We focus on the language at issue in section 786, subdivision (c)(1), which establishes a two-part test for satisfactory completion of probation. The first part requires that the minor “has no new findings of wardship or conviction for a felony offense or a misdemeanor involving moral turpitude *during the period of supervision or probation.*” (§ 786, subd. (c)(1).) We interpret subdivision (c)(1) of section 786 in conjunction with subdivision (a), which conditions the dismissal of a petition on the satisfactory completion of “(1) an informal program of supervision pursuant to Section 654.2, (2) probation under Section 725, or (3) a term of probation for any offense.” It is clear to us that in section 786, the determination whether a minor has satisfactorily completed probation (or supervision) is to be evaluated with respect to the period the minor is subject to probation for the offense sustained in a particular petition.⁶ Thus, in applying the first part of the subdivision (c)(1) test, the juvenile court determines whether there was a new finding of wardship or conviction only during the period of probation that is attributable to the petition that the minor seeks to have dismissed.

Here, however, in deciding whether to dismiss and seal L.H.’s third petition, the juvenile court took into account a felony conviction that occurred before the beginning of L.H.’s probation for that petition. The court stated that L.H. was on probation for all

⁶ This interpretation is reinforced by section 786, subdivision (f)(1), which allows a court, when considering whether to dismiss and seal the “instant petition,” to also consider prior petitions sustained against the minor, and dismiss and seal them if they “meet the sealing and dismissal criteria otherwise described in this section.” The statutory language reflects that dismissal and sealing are evaluated on a petition-by-petition basis, which necessarily requires the court to take account of the offenses alleged in a particular petition and determine whether the minor satisfactorily completed the probation imposed in connection with that petition.

three juvenile petitions at the time he was convicted of a felony as an adult, but this was plainly incorrect. At the time of L.H.'s adult conviction, he was on probation as a result of the first two juvenile petitions,⁷ but he was not yet on probation for the third. This means that L.H. met the first part of the section 786, subdivision (c)(1) test for satisfactory completion of probation for the third petition. Accordingly, the juvenile court should have addressed the second part of the test, and exercised its discretion in determining whether L.H. had substantially complied with the reasonable orders of his probation.

The Attorney General argues that L.H. forfeited this claim of error by failing to raise it in the juvenile court, but we exercise our discretion to reach the issue, which concerns statutory interpretation and does not involve disputed facts. The Attorney General also argues that even if L.H. was not on probation for the third petition, the motion was properly denied because L.H. was under the juvenile court's "supervision" on that petition when he committed and was convicted of his adult felony and when the juvenile court made new findings of wardship in connection with the third petition. The argument finds no support in the statute. The term "supervision" in section 786, subdivision (c)(1) must be interpreted by reference to subdivision (a), which refers specifically to "an informal program of supervision pursuant to Section 654.2." No such program of supervision is at issue in this case. Further, the juvenile court's finding of wardship on the third petition cannot in and of itself justify denying L.H.'s section 786 motion to dismiss and seal that very petition. This would effectively read section 786 out of existence and defeat its purpose, "which is to provide a streamlined sealing process for minors who satisfactorily complete a program of supervision or term of probation after a delinquency petition has been filed against them." (*In re G.F.* (2017) 12 Cal.App.5th 1, 7.)

⁷ L.H.'s motions to dismiss those petitions and seal the records associated with them have been denied, and are not at issue in this appeal.

Based solely on the felony conviction that predated L.H.'s probation for the third petition, the juvenile court denied L.H.'s motion to dismiss and seal the third petition. This was contrary to section 786, subdivision (c)(1), and was error. As a result of the error, the juvenile court did not consider whether L.H. substantially complied with the reasonable orders of probation. Because this is a matter for the juvenile court's discretion in the first instance, we shall remand the matter. We do not reach L.H.'s argument that he substantially complied, nor do we express any views on the outcome of the determination.

DISPOSITION

The order denying L.H.'s motion to dismiss and seal the records pertaining to his third petition under section 786 is reversed. On remand, the juvenile court shall exercise its discretion and determine whether, during the time he was on probation for the offense sustained in the third petition, L.H. "substantially compl[ied] with the reasonable orders of supervision or probation that [were] within his . . . capacity to perform." (§ 786, subd. (c)(1).)

Miller, J.

We concur:

Kline, P.J.

Richman, J.

A153881, *People v. L.H.*